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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,651	12/17/2001	Francis D. Palazzo	4665/6	1856

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EXAMINER

TRAN, HAI V

ART UNIT PAPER NUMBER

2611

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/022,651

Applicant(s)

PALAZZO ET AL.

Examiner

Hai Tran

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

HAITRAN
PRIMARY EXAMINER

Continuation of 3. NOTE: 35 USC101 issue: Applicant's remark, "Thus, claim 1 does claim functional interrelationships between the data structure and computer software components", is noted; However, original/amended claim 1 still does NOT claim functional interrelationships between the data structure and the computer software AND HARDWARE COMPONENTS, as defined by MPEP 2106.IV.B.1(a).

Applicant further argues, "The presentation of the electronic program guide is in part a software component of the set top terminal, and thus the claim language, as presently presented, does in fact claim a functional interrelationship between the data structure and a computer software component."

In response, the Examiner respectfully disagrees with Applicant's argument because the EPG recites in (original/amended) claim 1 is NOT necessary to be in part a software component of the set top terminal, as Applicant alleged. The cited EPG in original/amended Claim 1 is an abstract idea that can be represented/written/drawn on a piece of paper using a pen/pencil to draw/describe the claimed abstract idea. As such, EPG draws/describes on a piece of paper is NOT in part of a software component of the set top terminal, as Applicant alleged, but rather a piece of paper that contains/stores a drawing/description of a data structure and EPG information with its interrelationship with other data, wherein the piece of paper is a computer readable media, for instance, because the information on the piece of paper could be scanned/read by a scanner into a computer for displaying to the user.

Moreover, the original claim 1 or amended claim 1's subject matter fails to produce a useful, concrete or tangible result because the claim describes an abstract idea of a data structure stored on a computer readable medium that describes how a data structure is defined without specifically describing how the data structure could be USED/PROCESSED by a PARTICULAR DEVICE, i.e., CATV transmitter, set-top terminal. The claimed abstract idea is NOT necessary performed by a computer/set top terminal, as Applicant alleged, but the claimed abstract idea could be performed by a human being with the use of a pen/pencil for drawing/describing the claimed abstract idea of a "data structure" on a piece of paper (computer readable medium) for storage and then the information on the piece of paper could be read by a scanner into a computer for displaying.

Amended claim 1 raises new issues because added limitation from claim 2 into claim 1 changes the scope of the originally filed claim 1 along with its dependent claims. Moreover, added limitation "the broadcast advertisement comprising audio and video" also raises new issue to the originally filed claim 1.

In response to Applicant's argument that amended "claim 1 is not anticipated and fully satisfies the requirements of 35 USC § 102 and is patentable thereunder", the Examiner respectfully disagrees and moots for the above obvious reason in which amended claim 1 raises new issues.

Claim 21, Applicant fails to point out how the claim's limitations distinguish from the references applied but merely states, "claim 21 contains substantially similar relevant limitations as those discussed above in regard to claim 1, and thus is also patentable under 35 USC § 102". Applicant further argues, "Fries reference does not teach or suggest a data structure which is formatted for broadcast in combination a broadcast advertisement comprising audio and video".

In response, the Examiner refers Applicant back to the previous (Final and Advisory) Office action and further cites Col. 5, lines 35-50 in which Fries clearly discloses that digitized channels are multiplexed as data packets onto 6MHz analog channel in which encoded packets carry corresponding PIDs of Audio and Video. As discussed in the previous Advisory action, Fries' s STB receives the promotion data encoded into a private data packets, which include page images that is associated with information service, i.e., pay-per-view advertiser transmitted over the network (Col. 5, lines 36-Col. 6, lines 15 and lines 43-55) in which the display page image (advertisement page) from advertiser having page elements, i.e., advertisements, displayed thereon including link to additional information (Col. 6, lines 48-55). Fries further discloses a page image is formatted for broadcast comprising audio (Col. 21, lines 1-Col. 22, lines 20, specifically lines 4-6 for audio) and video (Col. 4, lines 17-28 and Col. 21, lines 60-65+).

As such, the Examiner maintains the rejection.